

Office of the Secretary of Labor

§ 18.72

(1) Take the deponent's testimony in response to the questions;

(2) Prepare and certify the deposition; and

(3) Send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of completion or filing*—(1) *Completion*. The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing*. A party who files the deposition must promptly notify all other parties of the filing.

DISPOSITION WITHOUT HEARING

§ 18.70 Motions for dispositive action.

(a) *In general*. When consistent with statute, regulation or executive order, any party may move under § 18.33 for disposition of the pending proceeding. If the judge determines at any time that subject matter jurisdiction is lacking, the judge must dismiss the matter.

(b) *Motion to remand*. A party may move to remand the matter to the referring agency. A remand order must include any terms or conditions and should state the reason for the remand.

(c) *Motion to dismiss*. A party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness. If the opposing party fails to respond, the judge may consider the motion unopposed.

(d) *Motion for decision on the record*. When the parties agree that an evidentiary hearing is not needed, they may move for a decision based on stipulations of fact or a stipulated record.

§ 18.71 Approval of settlement or consent findings.

(a) *Motion for approval of settlement agreement*. When the applicable statute or regulation requires it, the parties must submit a settlement agreement for the judge's review and approval.

(b) *Motion for consent findings and order*. Parties may file a motion to accept and adopt consent findings. Any agreement that contains consent findings and an order that disposes of all or part of a matter must include:

(1) A statement that the order has the same effect as one made after a full hearing;

(2) A statement that the order is based on a record that consists of the paper that began the proceeding (such as a complaint, order of reference, or notice of administrative determination), as it may have been amended, and the agreement;

(3) A waiver of any further procedural steps before the judge; and

(4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

§ 18.72 Summary decision.

(a) *Motion for summary decision or partial summary decision*. A party may move for summary decision, identifying each claim or defense—or the part of each claim or defense—on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law. The judge should state on the record the reasons for granting or denying the motion.

(b) *Time to file a motion*. Unless the judge orders otherwise, a party may file a motion for summary decision at any time until 30 days before the date fixed for the formal hearing.

(c) *Procedures*—(1) *Supporting factual positions*. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection that a fact is not supported by admissible evidence*. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

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(3) *Materials not cited.* The judge need consider only the cited materials, but the judge may consider other materials in the record.

(4) *Affidavits or declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When facts are unavailable to the nonmovant.* If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the judge may:

(1) Defer considering the motion or deny it;

(2) Allow time to obtain affidavits or declarations or to take discovery; or

(3) Issue any other appropriate order.

(e) *Failing to properly support or address a fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c) of this section, the judge may:

(1) Give an opportunity to properly support or address the fact;

(2) Consider the fact undisputed for purposes of the motion;

(3) Grant summary decision if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) Issue any other appropriate order.

(f) *Decision independent of the motion.* After giving notice and a reasonable time to respond, the judge may:

(1) Grant summary decision for a nonmovant;

(2) Grant the motion on grounds not raised by a party; or

(3) Consider summary decision on the judge's own after identifying for the parties material facts that may not be genuinely in dispute.

(g) *Failing to grant all the requested relief.* If the judge does not grant all the relief requested by the motion, the judge may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

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(h) *Affidavit or declaration submitted in bad faith.* If satisfied that an affidavit or declaration under this section is submitted in bad faith or solely for delay, the judge—after notice and a reasonable time to respond—may order sanctions or other relief as authorized by law.

HEARING

§ 18.80 Prehearing statement.

(a) *Time for filing.* Unless the judge orders otherwise, at least 21 days before the hearing, each participating party must file a prehearing statement.

(b) *Required conference.* Before filing a prehearing statement, the party must confer with all other parties in good faith to:

(1) Stipulate to the facts to the fullest extent possible; and

(2) Revise exhibit lists, eliminate duplicative exhibits, prepare joint exhibits, and attempt to resolve any objections to exhibits.

(c) *Contents.* Unless ordered otherwise, the prehearing statement must state:

(1) The party's name;

(2) The issues of law to be determined with reference to the appropriate statute, regulation, or case law;

(3) A precise statement of the relief sought;

(4) The stipulated facts that require no proof;

(5) The facts disputed by the parties;

(6) A list of witnesses the party expects to call;

(7) A list of the joint exhibits;

(8) A list of the party's exhibits;

(9) An estimate of the time required for the party to present its case-in-chief; and

(10) Any additional information that may aid the parties' preparation for the hearing or the disposition of the proceeding, such as the need for specialized equipment at the hearing.

(d) *Joint prehearing statement.* The judge may require the parties to file a joint prehearing statement rather than individual prehearing statements.

(e) *Signature.* The prehearing statement must be in writing and signed. By signing, an attorney, representative, or